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NO. 87-848

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

THE COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH AND THE DIRECTORS OF THE MAY AND AUSTIN UNITS AT BOSTON STATE HOSPITAL,

Petitioners,

v.

RUBIE ROGERS, HAROLD WARNER, ABLE BOLDEN, WILLIE WADSWORTH, DONNA HUNT, AND JAMES COLLERAN,

Respondents.

PETITIONERS' SUPPLEMENTAL BRIEF

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On the same day the pending petition for a writ of certiorari was mailed to this Court, the highest state court in Massachusetts held that the Commonwealth of Massachusetts does not enjoy sovereign immunity from postjudgment interest on an award of attorney's fees

and costs under 42 U.S.C. § 1988. Gaulin v. Commissioner of Public Welfare, 401 Mass. 1001, ___ N.E.2d ___, aff'g, 23 Mass. App. Ct. 744, 505 N.E.2d 898 (1987). The deadline for petitioning this Court for a writ of certiorari to review Gaulin is February 1, 1988.

The petitioners do not believe that either the court's decision in Gaulin or the discretionary decision of the Attorney General of Massachusetts whether to petition this Court to review Gaulin adversely affects the merits of the present pending petition. However, the petitioners are filing this brief because they are mindful of Supreme Court Rule 22.6 and this Court's admonition that "counsel have a continuing duty to inform the Court of any development which

may conceivably affect the outcome" of a case. Tiverton Board of License Commissioners v. Pastore, 469 U.S. 238, 240 (1985), quoting from Fusari v. Steinberg, 419 U.S. 379, 391 (1975) (Burger, C.J., concurring) (emphasis added).

At the heart of the two questions presented by the pending petition are what standards should be applied in civil contempt proceedings against state officials in federal court and what is the proper exercise of the federal court's civil contempt powers in such a case. The answers to these questions are of interest to every state since the Eleventh Amendment, federalism, comity, and equity principles involved are ones on which every state (and state official) should be entitled to rely.

While the contempt order at issue arises from the court of appeals' assumption[1/] that the Commonwealth of Massachusetts enjoys immunity from postjudgment interest on an award of attorney's fees and costs under 42 U.S.C. § 1988, the petition does not ask this Court to decide whether the court of appeals' assumption was correct. Nor, if the petition were granted to review either or both of the questions that are presented, would this Court need to decide whether the court of appeals' assumption was correct. The first question asks whether a federal court may ever use its civil contempt powers to penalize a state official (or state)

1/ The court of appeals never squarely ruled that the Commonwealth enjoyed postjudgment interest immunity. See Pet. at 6 n. 6, 8-14, 25 n. 13.

for refusing to waive a claim of right, privilege, or immunity which the court believes to be valid. The second question could arise in any federal court contempt proceeding against a state official who lacked authority, under state law, to comply with a court order.

Therefore, the petitioners submit that the pending petition for a writ of certiorari to the court of appeals should be granted.

Respectfully submitted,

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